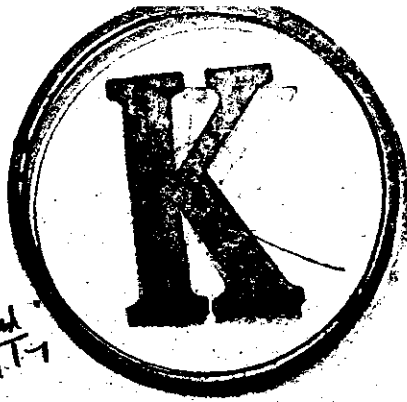


1952



File No. O. L. R. C. Bom.
City/52.

Legal Dept.

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Subject:—Opinions under the
Bombay City Land Revenue
Code, 1876.

File No. O. L. R. C. Bom. City/52

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C O N T E N T S

Legal Department File No. O. O.L.R.C. Bombay City/52

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No. 4434.

Legal Department,

Bombay Castle (Bombay No.1),

24th March, 1952.

To
The Collector of Bombay.

Subject :- Recovery of arrears of Excise dues
from Shri Raghunath Balkrishana
Shete.

Sir,

With reference to your letter No. NEVSR.II-6321, dated the 29th February 1952, on the above subject, I have the honour to state that arrears of Abkari dues although recoverable as arrears of land revenue are not dues in respect of any specific land of the defaulter. In case of any sale of immoveable property belonging to the defaulter other than that for which land revenue is due, such sale will not be free from incumbrances created by the holder (vide G.O. 6391, dated 9th September 1890 referred to at page 204 of the Bombay City Land Revenue Act by Vaidya). Sub-section 4 of section 6 of the Revenue Recoveries Act, 1890 also states that whenever proceedings are taken against any immoveable property for recovery of an amount stated in a certificate, the interests of the defaulter alone therein shall be proceeded against and no incumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of proceedings being taken against those interests. It will thus be clear that no interests other than that of Shree Shetye were liable to be attached and the attachment of the interests of other persons was illegal.

2. Under Rule 91 Order 21 of the Civil Procedure Code, a sale can be set aside on the grounds of the material irregularity or fraud in publishing or conducting the sale and an omission of the incumbrances over the property will be a material irregularity under that rule (AIR 1932 All.

(AIR 1932 All. 369). It is, therefore, advisable to reissue amended jahirnama attaching only the right, title and interest of Shree Shetye the defaulter before issue of the Notice for sale.

3. The papers received under your letter under reference are ~~is~~ returned herewith.

Yours faithfully,

RM 22/3

Solicitor to Government.

C.G.R. 16-6-

C 5

Legal Department.

It appears from the papers underlying the present reference that a meeting was convened to discuss Government's policy with regard to the revision of assessments in the Bombay city. As a result of the discussion, Secretary, R.D., formulated the following main instructions to the Collector:

(1) In normal cases the revised assessment should be fixed as in the past at 5 per cent of the market value.

(2) If the Collector had any reason to differ from the valuation made by the Consulting Surveyor, he should discuss the matter with that officer and try to arrive at a fair solution. If there was still no agreement between the Collector and the Consulting Surveyor, the Collector should refer the case to Government stating the reasons why he differed from the Consulting Surveyor and making the necessary recommendations.

(3) If the Collector accepted the valuation made by the Consulting Surveyor but still felt that the property was under-developed and the owner would not be able to bear the assessment, he should proceed in the following manner:

(a) If the under-development of the property is due to the negligence of the owner himself, full assessment should be levied at 5 per cent of the market value.

(b) If the under-development was due to any Act or Rule of Government, e.g., the Rent Act or the Tenancy Act, full assessment should also be levied in the sanction to be issued, but the proportionate remission or reduction of assessment should be made with the approval of Government till such time as the particular Act is in force.

(c) If the under-development is due neither to the negligence of the owner nor to any Act of Government but due to certain natural conditions, the revised assessment should be fixed at a reduced rate for a period of only five years, after which the matter should be reconsidered.

The D.S., R.D., appears to demur to the view of levy of full assessment on undeveloped lands. He considers that holders of lands on Taka and L.N.A. (land newly assessed) tenures are under no obligation whatever to develop their land and, therefore, Government cannot force them to do so even indirectly by rack-renting them as the holders have proprietary rights in their lands. R.L.A. is requested to advise whether the view taken by the D.S., R.D., is correct.

Whatever may be the past incidents of the Toka tenure, the Toka holders have now been treated as absolute owners of land, the only right of Government being to assess the land. Government have no interest in the land, proprietary or otherwise. They have no ~~interest~~ longer the power to resume any Toka land at their pleasure. Their only right is the right to assess, the right and the remedies being those prescribed by the Land Revenue Act (see the observations of Mull J. in land Acquisition Reference No. 40 of 1923 in the matter of;

(1) Government, and (2) Mr. N.H. Moos, Administrator pendente lite of the estate of D.C. Shroff). It is, therefore, apparent that all that Government can ~~ex~~ claim in respect of the Toka lands is assessment and this assessment, it appears, is liable to be revised from time to time. There is no general right on the part of the holders of these Toka lands in limitation of Government right to enhance assessment at its

at its discretion (see Shapurji v. Collector of Bombay, I.L.R. 9 Bombay 483; Dandekar's Law of Land Tenures, pp. 570-571). This principle has been recently approved by the Supreme Court in Collector of Bombay v. Municipal Corporation (1952) S.C.R. 43. In the cases of (1)

Madhavdas Gokuldas Pata v. The Government of Bombay

Appeal No 147 of 1911, and (2) *Gout of Bom. v.*

v. N.H. Nong (24 Bom. L.R. 471), and (3) Government

of Bombay v. Khanderao (25 Bom. L.R. 794), the question

arose as to how the apportionment of compensation of the Toka Lands should be made between Government and the holder. Government pressed in all these cases that its right to enhance the assessment after 1929 when the right to revise the assessment would accrue should be taken into consideration and on the basis of that right the apportionment of the compensation should be made.

Admitting the plea of Government that Government was entitled to the apportionment of the compensation on that basis, the High Court in all these cases proceeded to consider what would be the basis of valuation of Government's right to revise the assessment after 1929. In Madhavdas Gokuldas Pata v. Government of Bombay, the rental of 4 per cent on the capital value of the land was assumed to be a burden which the land could then fairly bear and what the Tribunal of Appeal held was that the power of Government to increase the assessment in being unlimited, Government could increase the assessment in 1929-30 to 4 per cent on the value of the land, and since the land could bear that burden, there was no reason why the Government's claim to 4 per cent should be disallowed. In Government of Bombay v. N.H. Nong the rate of Government paper at that time was 4 per cent and having regard to the nature of the land and its situation, the Appellate Court took the future assessment at 2 per cent and capitalised it at 5 per cent. In Govern

In Government of Bombay v. Dhandarao the Appellate Court took the increased assessment at 4 per cent and capitalised it at 6 per cent. The observations of Macleod C.J. in that case are very pertinent:

" It seems to us that it is hopeless at the present moment to speculate on what the Government policy will be in 1929 We have to decide between the views of Government, and no doubt we have to consider that they are entitled at the end of the period to re-assess the land at a rate entirely within their discretion, and the views of the claimants, the present owners, who may consider that they have rights in the nature of occupancy rights, which would entitle them to pay something less than a rack rent, which otherwise Government would charge on the basis that the lands were liable to be resumed at the end of the period. Whether in 1929 there will be any Toka tenants still left in Bombay is also problematical. But if there are nay, it is quite possible that they may attempt to urge their claims in this Court, and naturally it is quite impossible ~~therefor~~ for any one to place any value on such claims at the present moment. Still our own view is that Toka tenants are entitled to some consideration, and they are not to be treated at the present day as if in 1929 they would be rack-rented off their lands. In these cases we have to fix the rate at of assessment on the present value and the rate at which it should be capitalised For the purpose of apportionment between rival claims of Government and the tenants, we may say that it would not be fair in 1919 to fix the prospective rate of assessment higher than 4 per cent, while there may be cases in which it may be equitable to

equitable to allow a lower rate."

The ratio decidendi of all these cases is that Government's right to revise the assessment, strictly speaking, is unlimited and it is entirely within its discretion to ~~the~~ revise it, either raising or lowering it according to the circumstances, the market value and the economic considerations and it is competent for Government to frame its own policy. The correct principle to be followed in the case of taka lands is that laid down by the Bombay High Court in Shapurji Jivanji's case referred to above. In the case of Foras or Foras Taka lands which were the subject matter of the said suit, the High Court observed:

" It may be, as suggested by Mr. Warden and Mr. Le Mesurier in the works referred to in the argument, that the land now in question was originally waste land reclaimed from the sea, which the inhabitants were invited to cultivate. It may be that at first they paid no rent, and that subsequently they were only called upon to pay a very small rent, which has continued the same for very many years. But it does not follow from these facts that the Government has forfeited its right to enhance the assessment. The expenses incurred as well as the benefits conferred by Government increase with the progress and development of the community, and it is not only legal, but politic and just, to increase assessments in accordance with the increased value of the land, so far as that increase is caused, ~~as~~ not by the exertions of the holders, or the improvements made by them, but by the growth of general prosperity under the influences of good administration." The above observations apply equally to the right of Government to enhance the assessment of Taka lands in the Bombay City.

As Government are not the proprietors of taka lands and the holders thereof are not mere tenants no question of rack-renting arises. But the reasonable and proper course for Government would be to fix the revised assessment at

at some percentage of the market value of these lands. It appears that after 1929 the Government did not frame its exact policy of revision. However, from certain orders issued by Government, it appears that Government has directed to levy the revised assessment at five percent of the market value of these lands. Whether the Toka lands can bear the burden of 5 per cent of their market value is a question of policy which it is for Government to decide. If Government decides that 5 per cent is reasonable and equitable, nobody can dispute it, the civil court having no jurisdiction in the matter.

The next question for consideration is whether, while revising the assessment at 4 per cent of the market value of the land, the development or the undevelopment of the land should be taken into account. R.D. appears to be of the view that whether the land is developed or undeveloped is immaterial and the full revised assessment should be levied in order to force the holder to develop it. D.S., R.D. does not agree with this view. As pointed out above in the passage from Shapurji Jivanji's case, in determining the rate of assessment the question of the developed or undeveloped state of the land does not arise. As stated by Dandekar in his book on Land Tenures: "Where the rent or assessment is liable to be enhanced, the principle always followed in the city as well as in the mofussil is that in raising the rent or assessment, the improvements by or at the cost of the holder are not to be taken into consideration. This principle is given legislative expression for the mofussil in section 107 of the Land Revenue Code of 1879 and is judicially recognised in connection with the land in the city of Bombay." (See Dandekar's Law of Land Tenures, Vol. 2, page cxv Introduction). All lands in a particular locality enjoying similar advantages or suffering from similar

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disadvantages will have to be similarly assessed irrespective of the fact whether the holders have or have not developed these lands and for the purpose of assessment the market value of these lands will have to be settled without taking into account whether land is or is not developed by or at the cost of the holder. The question raised by the D.S., R.D., would not, in view of this legal position, survive.

Lands on newly assessed tenures were originally Government lands encroached upon. The encroachments having been noticed, they were regularised by fixing assessments under section 8 of the Bombay City Land Revenue Act, 1876. The levying of the assessment has secured the position of these lands but Government has power to raise the assessment at its discretion. Although these lands were primarily Government lands, the right of resumption has been lost to Government though the assessment is liable to revision at the end of the period of guarantee (vide p. 116 of the Bombay City Land Revenue Act by Valdiya and Gupta). In revising the assessment of these lands, the development or improvement made by or at the cost of the holder is not to be taken into consideration. Consequently, similar would be the position of the holders of these lands as that of the holders of Toka lands.

Sd/-

Additional Secretary to Government.

U.R. to R.D. No. 5226, dated the 5th April 1952.

C.G.R.. 16-6-

Office of the R.L.A.

Eviction from
lands belonging
to Government
of India.

Eviction of trespassers can be ordered under section 26 or section 29-A of the Bombay City Land Revenue Act, 1876, but these provisions will not be available in case of lands vesting in the Central Government. Under the general law a trespasser can be evicted without notice and without recourse to a court of law but action in this behalf will have to be taken by the Union Government itself as the ~~max~~ land vests in them.

O.C. Sd/- (P.M.L)

Remembrancer of Legal Affairs.

U.R. to R.D., No. 6574, dated the 22th April 1952.

C.G.R. 16-6-

C. 5

Legal Department.

In Government Resolution, Revenue Department No. 1859/28, dated the 14th April 1931, which has been continued in force by paragraph 4 of Government Resolution, Revenue Department, No. 3759/51, dated the 18th April 1952, Government has laid down the principle of graduation of revised assessments and rents. According to that principle, when the revised non-agricultural assessment or rent of any plot of land in Bombay city is more than 12 times but not more than 50 times the current assessment or rent, the increased assessment or rent should be recovered at 12 times the current amount during the first 10 years of the period of revision, at 25 times or in full, whichever is less, during the second 10 years, and in full during the remaining years; and when the revised assessment or rent is more than 50 times the current assessment or rent, only one-fourth of the increased amount should be recovered during the first 10 years and one-half during second 10 years, the full amount being recovered during the remaining years. This principle will apply only to the revision of non agricultural assessment or rent of any plot of land in Bombay city. In the present case it is true that the land bearing No. 507 of Mazgaon Division, which was assessed at a concessional rate, became due for revision in December 1947, on the ground of expiry of the period of assessment. But it is now proposed not to levy the revised concessional assessment but to levy full non agricultural assessment on the land as the former use of the land for ~~dharmashala~~ dharmashala has ceased and the land has been put to a remunerative use. It is apparent from these facts that it is not proposed to revise the concessional assessment imposed on the land but to subject it to full non agricultural assessment. If it were proposed to revise the concessional assessment levied on the land, the principle of graduation of revised assessment laid down in Government Resolution, Revenue Department, No. 1859/28, dated the 14th April 1931,

1931, would have applied. But since it is now proposed to levy full non-agricultural assessment on the land, there is no question of revision of the non-agricultural assessment which would have been ordinarily levied if the land were not used for dharmashala. Consequently, the aforesaid Government Resolution has no application and the view taken by the Deputy Secretary, Finance Department is correct.

Sd/-

O.C. Additional Secretary to Government

U.R. to R.D., No. 12042, dated the 22nd July, 1952.

C.G.R. 16-6-

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